

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
DIVISION**

**PERSONS IN STATE CUSTODY APPLICATION FOR
HABEAS CORPUS UNDER 28 U.S.C. SECTION 2254**

Name: Guy E. Jackson
Prison Number: 1061486 07-0125-CV-W HFS P
Place of Confinement: Tipton Correctional Center
United States District Court Western District of Missouri
Case No: _____ (to be supplied by Clerk of the U.S. District Court)

Guy E. Jackson PETITIONER
(Your Full Name)

v.

Jill McGuire RESPONDENT
(Name of Warden, Superintendent, Jailer, or authorized person having custody of petitioner.)

and

THE ATTORNEY GENERAL OF THE STATE OF Missouri

ADDITIONAL RESPONDENT.

(If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, petitioner should file a motion under 28 U.S.C. Section 2255, in the federal court which entered the judgment.)

Instructions - Read Carefully

- (1) This petition must be legibly handwritten or typewritten, and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as a basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the facts which authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.

- (4) If you do not have the necessary filing fee you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court whose address is

West Dist. of Mo. 2710 Charles E. Whittaker U.S. Courthouse
400 E. 9th St. ~~811 Grand Avenue~~, Kansas City, MO 64106

- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
DIVISION**

PETITION

1. Name and location of court which entered the judgment of conviction under attack:

Circuit Court of Miller County, Missouri

2. Date of judgment of conviction: April 17, 2001
3. Length of sentence: Five (5) years
4. Nature of offense involved (all counts): Driving While Intoxicated

5. What was your plea? (Check one)

- (a) Not guilty ☐
(b) Guilty ☒
(c) Nolo Contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. Kind of trial: (a) Jury ☐ (b) Judge only ☒
7. Did you testify at the trial? Yes ☒ No ☐
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒
9. If you did appeal, answer the following:

- (a) Name of court: NIA
(b) Result: _____
(c) Date of result: _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, Rule 27.26 motions or other motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes", give the following information:

- (a) (1) Name of court: Circuit Court of Miller County
(2) Nature of proceeding: Petition
(3) Grounds raised: Excessive Sentence exceeding jurisdictional amount authorized
(4) Did you receive an evidentiary hearing on your petition, application, or motion: Yes ☐ No ☒
(5) Result: Denial
(6) Date of result: unknown

- (b) As to any second petition, application or motion give the same information:

- (1) Name of court: N/A
(2) Nature of proceeding: _____
(3) Grounds raised: _____
(4) Did you receive an evidentiary hearing on your petition, application, or motion? Yes ☐ No ☐
(5) Result: _____
(6) Date of result: _____

- (c) As to any third petition, application or motion, give the same information:

- (1) Name of court: N/A
(2) Nature of proceeding: _____
(3) Grounds raised: _____
(4) Did you receive an evidentiary hearing on your petition, application, or motion? Yes ☐ No ☐
(5) Result: _____
(6) Date of result: _____

(d) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

- (1) First petition, etc. Yes ☒ No ☐
- (2) Second petition, etc. Yes ☐ No ☐
- (3) Third petition, etc. Yes ☐ No ☐

(e) If you did **not** appeal from the adverse action on any petition, application or motion, explain why you did not:

N/A

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, **you should raise in this petition all available grounds** (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search or seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel
- (j) Denial of right of appeal.

A. Ground one: See Attached

Supporting FACTS (tell your story briefly without citing cases or law):

See Attached

B. Ground two: See Attached

Supporting FACTS (tell your story **briefly** without citing cases or law):

See Attached

C. Ground three: See Attached

Supporting FACTS (tell your story **briefly** without citing cases or law):

See Attached

D. Ground four: See Attached

Supporting FACTS (tell your story **briefly** without citing cases or law):

See Attached

STATEMENT OF FACTS

1. On February 3, 2000 Petitioner was arrested/charged with committing the class D felony of DWI as well as other misdemeanor/traffic offenses.
2. On April 17, 2001 Petitioner entered a plea of guilty to the DWI charge and was sentenced to serve a five year suspended execution of sentence (SES) probation for five years.
3. On August 15, 2005 the SES was revoked and Petitioner was ordered to serve five years imprisonment.
4. Since the commission of the offense, and prior to execution thereof, the Missouri Legislatures lowered the range of punishment for a class D felony to four (4) years instead of five (5) years.
5. Petitioner filed a petition seeking compliance with the substantive change in law; however, the circuit court denied same.
6. Petitioner sought leave to appeal but was denied same by the Missouri Court of Appeals, Western District, WD67673.
7. This petition follows.

EXHAUSTION

8. The crux of the claims presented involve jurisdictional issues, which can never be waived.
9. Petitioner has, or has attempted to, presented his claims to the Circuit Court and Appellate Court, thereby giving the state courts a chance to rule on the merits.
10. There are no available remedies within the state courts to which Petitioner can raise the claims due to Res Judicata and Collateral Estoppel.

11. Petitioner initiated this action as soon as the information became known to him and could not have done so at an earlier date.

POINT I.

11. The Sentencing Court lacked jurisdiction to order Petitioner to serve the five (5) year sentence in that this sentence exceeded the maximum statutory range of punishment established by the Missouri Legislatures thereby depriving Petitioner of his rights to Due Process and Equal Protection of the Law as guaranteed by the Fifth, Tenth and Fourteenth Amendments to the United States Constitution.

POINT II.

12. Petitioner was deprived his rights to due process, equal protection of the law and Access to the Courts, as guaranteed by the First, Tenth and Fifteenth Amendments to the United States Constitution, by the Missouri Court of Appeals depriving Petitioner the ability to appeal the Circuit Courts ruling.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them:

N/A

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following states of the judgment attacked herein:

(a) At preliminary hearing

N/A

(b) At arraignment and plea

(c) At trial

(d) At sentencing

(e) On appeal

(f) In any post-conviction proceeding

(g) On appeal from any adverse ruling in a post-conviction proceeding

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

N/A

(b) And give date and length of sentence to be served in the future:

- (c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future:

Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which petitioner may be entitled in this proceeding.

Signature of attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on 1-25-07 Aug Jackson
date

Aug Jackson
Signature of petitioner

:hab2254.dkt